

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

W.W. ADCOCK, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
FORT WAYNE POOLS, INC.,	:	
Defendant.	:	NO. 95-3565

FORT WAYNE PLASTICS, INC.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
W.W. ADCOCK, INC.,	:	
Defendant.	:	NO. 97-7105

MEMORANDUM & ORDER

J.M. KELLY, J.

DECEMBER , 1997

Presently before the Court are Defendant's Emergency Motion to Continue trial in the above-captioned matter, as well as Plaintiff's Motion for Rule 11 sanctions in Civil Action No. 95-3565.

BACKGROUND

Plaintiff, W.W. Adcock, Inc. ("Adcock"), is a distributor of swimming pools and spas. Fort Wayne Pools, Inc. ("Fort Wayne") manufactures swimming pools and spas and its main office is located in Indiana. Starting in 1985, the parties entered into an agreement where Fort Wayne manufactured a line of spas, known as Freedom Spas, for Adcock. Adcock provided a mold for Fort Wayne to use in manufacturing the spas. Over the next several years, the

relationship between the parties grew as Adcock expanded its Freedom Spa line and purchased more molds for Fort Wayne to use in manufacturing spas. In 1990, Adcock commenced distribution of Fort Wayne swimming pools. Frays in the fabric of the relationship between the parties started to reveal themselves in late 1994 when Adcock attempted to have some of its molds moved to another manufacturer. Subsequently, Fort Wayne informed Adcock that Fort Wayne would no longer mold Freedom Spas for Adcock. Further, Fort Wayne decided to stop selling its branded pools to Adcock, although Adcock would be allowed to continue to sell a generic line of pools manufactured by Fort Wayne.

PROCEDURAL BACKGROUND

Adcock filed this action (the "Pennsylvania action"), alleging various antitrust violations, on June 5, 1995. Adcock subsequently filed an amended complaint on November 4, 1996, abandoning its antitrust claims and setting forth claims based upon breach of contract, bailment and fraud. Fort Wayne filed counterclaims based on contract and unjust enrichment. This matter was placed in the trial pool on March 25, 1997. Cross-motions for summary judgment were decided on June 27, 1997 and on that date, trial was scheduled for July 9, 1997.

On February 12, 1997, Fort Wayne filed a complaint in the Northern District of Indiana (the "Indiana action"), alleging that Adcock violated the Lanham Act, 15 U.S.C. § 1125(a), as well as state law claims. The essence of Fort Wayne's Lanham Act claim is that Adcock sold pools as Fort Wayne Pools, even though some of the

components were not manufactured by Fort Wayne. Adcock filed a motion to dismiss the Indiana action as a compulsory counterclaim or, in the alternative, to transfer the Indiana action to the Eastern District of Pennsylvania. On June 26, 1997, the district court in the Indiana action entered a Memorandum of Decision and Order, holding that the Indiana action was a compulsory counterclaim to the Pennsylvania action. The district court in Indiana transferred the matter to this Court for final disposition rather than granting Adcock's motion to dismiss. On July 8, 1997, Fort Wayne filed an Emergency Motion to Continue trial in the Pennsylvania action. During a telephone conference on July 8, 1997, I ordered Fort Wayne to file a supplemental brief setting forth the factual basis for its argument that it only became aware of its claim in the Indiana Action at the time it filed the Indiana Action. Fort Wayne subsequently filed a Motion for Reconsideration of the Order transferring the Indiana action, which was denied.

DISCUSSION

The centerpiece of Fort Wayne's argument that it only became aware of its Lanham Act claim when it filed the Indiana action is the deposition testimony of Michael Stranix ("Stranix"). Stranix, an Adcock employee, was deposed on February 4, 1997. From Stranix's testimony, Fort Wayne gleans that Adcock was selling pool kits as Fort Wayne pools, even though only structural components of the pools, specifically panels and braces, were manufactured by Fort Wayne, while other components, such as steps, were manufactured by other manufacturers. Further, after Fort Wayne

stopped selling products to Adcock in 1995, Adcock put together pool kits using Fort Wayne components in stock combined with components from other manufacturers.

Adcock points to the September 11, 1996 deposition testimony of Steven Rotch ("Rotch"). Rotch, an Adcock employee, testified that throughout the swimming pool portion of the relationship between the parties, Adcock would combine components from other manufacturers with Fort Wayne components if the customer did not prefer all Fort Wayne components. This practice became prevalent as Adcock liquidated the last of its Fort Wayne pools.

Fort Wayne cloaks its actions within its Rule 11 pre-complaint obligations. To accept Fort Wayne's argument as true, the Court would have to believe that discovery in the Pennsylvania action was the only available way to develop a factual basis for its Lanham Act claim and to meet its Rule 11 pre-complaint obligations. The logical extension of Fort Wayne's argument is that in order to comply with Rule 11, a plaintiff must, pre-complaint, conduct discovery to verify the basis of a complaint. The Federal Rules of Civil Procedure neither require nor provide for such a procedure. The heightened duties under Rule 11 advocated here by Fort Wayne cannot be used as a shield from the duty to promptly plead a compulsory counterclaim set forth by Rule 13. Further, based upon the record before the Court in this matter, it appears that Fort Wayne should have and did know well before February of 1997 that its Lanham Act claim existed. Rotch's deposition testimony covered much of the same ground concerning the

use of Fort Wayne components as was covered in Stranix's testimony. The record in this case, through the deposition of Fort Wayne employee Thomas Epple ("Epple"), as well as a letter sent by Epple to Adcock in January of 1995, show that Fort Wayne was aware that Adcock sold pool kits that did not contain only Fort Wayne parts. Finally, logic dictates that Adcock's orders would show that Adcock was not selling the complete kits that Fort Wayne argues were anticipated to be sold by Adcock. For example, if Adcock purchased panels and braces for 100 pools, but only two sets of steps, it would be obvious that Adcock was selling Fort Wayne pools without Fort Wayne steps. Therefore, the Court does not accept Fort Wayne's statement that the Indiana action was filed as soon as the basis for the complaint was known to Fort Wayne.

Having determined that Fort Wayne has known of the basis of its Lanham Act claim since at least January of 1995, the Court must now decide what to do with this claim. Fort Wayne asserts that it was aware of and addressed the issue of whether its Lanham Act claim was a compulsory counterclaim in the Indiana action and, as a result of its evaluation, determined that the proper course was to file its Lanham Act claim in Indiana. Fort Wayne, in recognizing that its Lanham Act claim could be viewed as a compulsory counterclaim, took and accepted the risk that its claim might be dismissed.

Fort Wayne has necessarily been walking a tightrope between the courts in the two cases. Fort Wayne freely admits that it used discovery in the Pennsylvania action in order to develop

evidence to support the Indiana action, yet Fort Wayne also argued "none of the evidence necessary to support the claims in the present action is relevant to the claims raised in the pleadings in the Pennsylvania action." Fort Wayne's Brief in Support of Motion to Reconsider Memorandum of Decision and Order ("Brief in Support of Motion to Reconsider"), at 9. Simply put, Fort Wayne sought evidence not reasonably calculated to lead to the discovery of admissible evidence.

Nor was this is not the only instance where Fort Wayne has asserted inconsistent arguments between the Indiana action and the Pennsylvania action. Fort Wayne argued in Indiana that finding a compulsory counterclaim would lead this court to dismiss the transferred Indiana action. Brief in Support of Motion to Reconsider, at 10. Before this Court,

[Fort Wayne] reminds the Court that the Indiana Court did not enter a final order on the issue of whether the Lanham Act Claims are compulsory counterclaims in the action. The Indiana Court did not have before it any of the pleadings from this case. Further, the Indiana Court did not intend for its orders to be binding on a subsequent court.

Reply Brief in Support of Motion to Continue Trial, at 3.

My reading of Magistrate Judge Cosbey's Memorandum of Opinion and Order in the Indiana action differ somewhat from Fort Wayne's reading. The Indiana action was transferred to this Court because it was a compulsory counterclaim that should have been filed as part of the Pennsylvania action. Magistrate Judge Cosbey recognized that I would have the benefit of knowing the status of

the Pennsylvania action in determining what to do with the Indiana action. Fort Wayne has now twice litigated the compulsory counterclaim issue in Indiana and lost. If the Pennsylvania record was relevant and helpful, Fort Wayne could have presented the record to the court in the Indiana action.

The procedural status of this action, with the transfer to this Court of the compulsory counterclaim represented by the Indiana action, leaves the Court with three alternatives as to how to proceed. First, the Court could reopen discovery and allow the parties to develop Fort Wayne's Lanham Act claim and proceed to trial in one consolidated matter. I reject this first option because this matter is now 2½ years old and, absent Fort Wayne's filing its motion to continue trial, would have been tried in July of 1997. Second, I could allow the parties to try the Pennsylvania action now and allow discovery and a later trial of Fort Wayne's Lanham Act claim. I must reject this option because it would create the kind of piecemeal litigation that Rule 13 is designed to prevent. Beyond the obvious waste of judicial resources that this option would allow, I am concerned that the first trial would be tainted by impending Lanham Act trial and that any meaningful chance to settle this matter would be lost. Third, the Court could dismiss the Indiana action as an untimely filed compulsory counterclaim. While I loathe to dismiss Fort Wayne's Lanham Act claim without allowing an opportunity for a full hearing on the merits, I believe that this is the required course given the delay already caused in this matter by Fort Wayne's actions. By Fort

Wayne's own admission, it considered whether the Lanham Act claim should have been filed as part of the Pennsylvania action. Fort Wayne's delay in commencing the Indiana action, coupled with the gamble to proceed in Indiana, make dismissal of the compulsory counterclaim transferred in the Indiana action appropriate.

RULE 11

Adcock has filed a motion for Rule 11 sanctions based upon Fort Wayne's filing of its Lanham Act claim and its subsequent actions in both this Court and the Northern District of Indiana. A significant procedural question is raised by Fort Wayne as Adcock served Fort Wayne with a "Safe Harbor" version of its Rule 11 motion upon the filing of the Indiana action, but the final Rule 11 motion filed with the Court is vastly different than the "Safe Harbor" version served upon Fort Wayne. The differences are the result of the chain of events in this case following Adcock's service of the "Safe Harbor" motion. Upon review of Fort Wayne's actions in both district courts, I believe that Fort Wayne has demonstrated a significant lack of candor in its dealings with its adversary and the courts, therefore creating a likelihood that Rule 11 sanctions are appropriate in this matter. I am convinced, however, that dismissal of the Lanham Act claim is the greatest sanction I would impose upon Fort Wayne if I were to determine that Rule 11 sanctions are appropriate. Accordingly, I shall dismiss the Rule 11 motion as moot and decline to address the "Safe Harbor" issue.

CONCLUSION

Based upon the facts presented to the Court, Fort Wayne delayed in filing the Indiana action, which was found to be a compulsory counterclaim to this matter by Magistrate Judge Cosbey in the Northern District of Indiana. As the Indiana action was transferred to this Court, I shall dismiss the transferred matter as an untimely filed compulsory counterclaim and dismiss Adcock's motion for Rule 11 sanctions as moot.